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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Mr. JUSTICE JUSTICEM.H.S. ANSARI

WRIT PETITION NO : 14339 of 1993

Between:

Y.R.K. Murthy, son of Y.A.N. Swamy
Plot No.49, Gayatrinagar Colony, Ameerpet, Hyderabad.

..... PETITIONER

AND

1. The Jawaharlal Nehru Technological University,
rep. by the Registrar, Masab tank, Hyderabad.
2. The Jawaharlal Nehru Technological University, rep. by its Executive Council,
Masab tank, Hyderabad.
3. The Jawaharlal Nehru Technological University Engineering College, rep. by its
Principal, Kukatpally, Hyderabad.
4. The Jawaharlal Nehru Technological University Engineering College, rep. by its
Principal, Anantapur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in dismissing the petitioner from service in University by order No.660/1993 , dt. 24/02/93 on the file of the 1st respondent as illegal, void and arbitrary.

Counsel for the Petitioner: Mr. P.NAVEEN RAO

Counsel for the Respondents: Mr. C.KODANDA RAM

The Court made the following :

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ORAL ORDER:

The petitioner, a lecturer in Chemical Engineering, appointed on 25-8-1959 and subsequently promoted to the post of Assistant Professor in Mechanical Engineering, has questioned the order dated 24-2-1993 passed by the Jawaharlal Nehru Technological University and communicated to the petitioner through its Registrar. By the said order, the petitioner has been dismissed from the service on the establishment of two charges levelled against him. The petitioner has questioned the said order of dismissal from service in the instant writ petition. The two charges framed against the petitioner are as under:

“Charge No.I

Sri Y.R.K. Murthy has reported for duty as Assistant Professor in Mechanical Engineering on 25-11-1988 at JNTU College of Engineering, Anantapur. He applied for leave from 30-11-1988 for four days and not reported for duty thereafter. Thus, he absconded from duty with effect from 4-12-1988.

Charge No.II

Sri Y.R.K.Murthy has not changed his habit of absconding from duty and thus misused the chance given to him for completing the balance period required to go on voluntary retirement and thus he behaved in a very irresponsible manner which warrants deterrent punishment.”

A few background facts may be noticed before dealing with the rival contentions. The petitioner proceeded on leave with effect from 30-10-1980 without obtaining any sanction for such leave from the competent authority and thereafter did not join duty. Thereupon, a memo dated 27-5-1981 was issued to the petitioner asking him to show cause why action should not be taken for terminating his services. In response thereto, the petitioner requested permission to go on voluntary retirement. The said request of the petitioner was referred to the Director of Local Fund, who opined that the petitioner is not entitled for voluntary retirement as he did not put in required

length of qualifying service. He was allowed to join in service. The petitioner joined in duty on 25-11-1988. The Principal of the institution in question reported that even after joining, the petitioner has not been regular. It was thereupon resolved by the Executive Council that continuance of the petitioner is not in academic interest. The petitioner was placed under suspension pending enquiry. Enquiry Officer was appointed.

The Enquiry Officer submitted his report intimating that no reply has been received, to the charges framed, from the petitioner. It was further reported that the petitioner has been absent from duty from 4-12-1988. The report is dated 15-5-1989. The Enquiry Officer recommended dismissal from service. A show cause notice was issued to the petitioner to show cause why he should not be removed from service under A.P.C.S. (CCA) Rules, 1963. No explanation was furnished to the said show cause notice. The matter was thereupon placed before the Board of Management and the Board, as can be seen from the impugned order, resolved to issue orders dismissing the petitioner from the service of the University. The impugned order is thus one of dismissal from service as communicated to the petitioner.

Learned counsel for the petitioner submitted that no finding or conclusions have been arrived at by the Enquiry Officer on the charges framed. A contention was also raised that the petitioner submitted a representation before the Enquiry Officer on 28-5-1989, but the same has not been considered. There is nothing on record to satisfy the plea of the petitioner with regard to submitting his written explanation on 28-5-1989. Except the oral affirmation that such reply in writing was furnished on 28-5-1989, there is nothing in the record to establish that any such representation was given. As already noticed, the Enquiry Officer found the charges established on the ground that there was no response from the petitioner denying the charges, and that the petitioner had continued to remain absent. The second contention advanced on behalf of the petitioner was that the final show cause notice said to have been sent by Registered Post Ack. Due was not received by the petitioner. There is no substance in the said submission. As can be seen from the impugned order, the show cause notice was issued by Registered Post Ack. Due and the Postal authorities confirmed its service.

It is now well settled that in exercise of writ jurisdiction under Article 226 of the Constitution of India, this Court exercises power of judicial review. It does not act as

a Court of appeal. It is concerned with the decision making process. Judged in the light of the said parameters, it cannot be said that the enquiry report is vitiated on any grounds or that the charges have not been established.

The only question that remains for consideration is whether the punishment inflicted on the petitioner on the establishment of the said charges is disproportionate. Keeping in view the background facts of the case as also the charges found established, it can be seen that the petitioner had been continuously absent over a long period of time. In the circumstances, there is little scope for this Court to interfere with the punishment inflicted on the petitioner on the establishment of the aforesaid charges.

However, it is seen that in the show cause notice issued to the petitioner, the punishment proposed was “why he should not be removed from service under A.P.C.S. (CCA) Rules, 1963.” However, as there was no reply or explanation submitted by the petitioner to the said show cause notice, the impugned order was passed whereby the petitioner has been “dismissed from the service of the University”. Under the First Statutes 33, the penalties that can be imposed on any member of the service of the University are enumerated. Under clause (6), removal from service and under clause (7), dismissal from service are the penalties amongst others that can be imposed.

As, in the case on hand, the show cause notice proposed removal from service, I am of the view that the order of dismissal was not warranted. If at all, the petitioner could have been removed from service on the establishment of the aforesaid charges. Accordingly, the punishment imposed on the petitioner is modified from dismissal from service to removal from service.

With the modification in the punishment as above, the writ petition is allowed in part. In the facts and circumstances of the case, there shall be no order as to costs.

(M.H.S.ANSARI, J.)

30th December 2004.

ARS

That Rule Nisi has been made absolute as above.

Witness the Honourable Sri Devinder Gupta, the Chief Justice on this the 30th day of December, Two Thousand and Four.

REGISTRAR.

To

1. The Registrar, Jawaharlal Nehru Technological University,

Masab tank, Hyderabad.

2. The Executive Council, Jawaharlal Nehru Technological University,

Masab tank, Hyderabad.

3. The Principal, Jawaharlal Nehru Technological University Engineering College, Kukatpally, Hyderabad.

4. The Principal, Jawaharlal Nehru Technological University Engineering College, Anantapur District.

5. Two CD copies.